

# AN ACT

Senate Bill 95-005

BY SENATORS Schroeder, Martinez, and Mutzbaugh  
also REPRESENTATIVES Knox, Agler, and George

CONCERNING THE REGULATORY AUTHORITY OF THE DEPARTMENT OF AGRICULTURE  
UNDER THE "MEASUREMENT ACT OF 1983"

Be it enacted by the General Assembly of the State of Colorado

**35-14-101. Short title.** This article shall be known and may be cited as the "Measurement Standards Act of 1983".

**35-14-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Approved for commercial use" means a device that has been inspected, tested, and approved by the commissioner.

(1.7) "Certificate of Conformance" means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories, said documents constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology Handbooks 44, 105-1, 105-2 or 105-3.

(2) "Certified scales" means scales located throughout the state which are used for public weighing and which meet the requirements of certification.

(3) "Certified weighers" means a natural person who is certified under the provisions of this article.

(4) "Commercial weighing and measuring devices" means those devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption that are sold or offered or exposed for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight, measure, or count.

(5) "Commissioner" means the commissioner of agriculture.

(6) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in

package form but on which there is marked a selling price based on an established price per unit of weight or of measure shall be construed to be a commodity in package form. The term "package" shall be construed to mean "commodity in package form".

(7) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(8) "Correct" means conformance to all applicable requirements of this article.

(9) "Department" means the department of agriculture.

(10) "Grain sample" means that portion of a grain, seed, or other agricultural commodity taken from the bulk of grain, seed, or other agricultural commodity for the purpose of determining moisture content.

(11) "Grain test scale" means any device which is necessary to determine weight for any grain sample.

(12) "Inch pound system" means the United States customary system of weights and measures as approved by the United States department of commerce.

(13) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, molded into, formed upon, embossed upon, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package; except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by this article.

(14) "Laboratory" means the metrology laboratory of the measurement standards section of the division of inspection and consumer services in the department.

(15) "Metric system" means the "System Internationale System of Weights and Measures", as adopted by the United States department of commerce.

(16) "Metrology services" means all testing, calibrating, and opening of weights and, when necessary, the making of adjustments to weights and measures in order to meet tolerances prescribed by the National Institute of Standards and Technology.

(17) "Moisture content" means the percentage content of moisture and other volatiles on a wet basis in a grain sample or official grain sample as determined in a manner recognized by the United States department of agriculture.

(18) "Moisture meter charts" means charts and tables used to interpret or interpolate value indications on a particular moisture-determining device into moisture content values.

(19) "Moisture-testing device" means all equipment and accessories required for determining the moisture content in a grain sample.

(20) "Multiunit package" means a package containing two or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multiunit package but capable of being individually sold in full compliance with all of the requirements of this article.

(20.5) "National Type Evaluation Program" means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the State of Colorado, and the private sector for the purpose of determining, on a uniform basis, conformance of a type with the relevant provisions of the following National Institute of technology handbooks:

(a) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices";

(b) Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances For Field Standard Weights (NIST Class F)";

(c) Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Measuring Flasks"; or

(d) Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards".

(21) "Nonconsumer package" or "package of nonconsumer commodity" means any commodity in package form other than a consumer package and particularly a package intended solely for industrial or institutional use or for wholesale distribution.

(22) "Not susceptible of repair" means any weight or measure which is designed or constructed in such a fashion so as to fail to comply with the applicable design or construction standards for such weight or measure as promulgated by the National Institute of Standards and Technology or which cannot be repaired to meet the tolerance standards

for such weight or measure as promulgated by the National Institute of Standards and Technology

(23) "Official grain sample" means that portion of a grain, seed, or other agricultural commodity which this state uses as the official transfer standard to test the accuracy of a commercial grain moisture-testing device.

(23.5) "Participating Laboratory" means any state measurement laboratory that has been certified by the National Institute of Standards and Technology, in accordance with it's program for the certification of capability of measurement laboratories, to conduct a type evaluation under the Type Evaluation Program

(24) "Placing in service" means placing in use any new, used, or previously rejected device which is being returned to service after repair.

(25) "Primary standards" means the physical standards of the state which serve as the legal reference from which all other standards and weights and measures are derived pursuant to section 35-14-104.

(26) "Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. When there is more than one principal display panel on a package, each of such panels shall meet the requirements pertaining to the principal display panel.

(27) "Random-weight package" means a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, as when packages of the same consumer commodity have no fixed pattern of weight.

(28) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(29) "Scale status report" means a report of the condition of the scale, including scale indication with applied known weights, upon completion of installation or repair.

(30) "Secondary standards" means the physical standards which are traceable to the primary standards through comparisons, using acceptable procedures, and are used in the enforcement of weights and measures laws and regulations.

(31) "Traceable" means the system of determining the value of a standard by comparison with approved standards of the National Institute of Standards and Technology.

(31.5) "Type" means a model or models of a particular measurement system, instrument, element, or field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.

(31.6) "Type Evaluation" means the testing, examination, or evaluation of a type by a participating laboratory under the National Type Evaluation Program.

(32) "Vehicle" means any device by which any property, produce, commodity, or article is or may be transported.

(33) "Weight" means net weight; except that, where the label states that the product is sold by drained weight, the term "weight" means net drained weight.

(34) "Weights" or "measures" means all weights or measures of every kind, any instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all of such instruments and devices.

**35-14-103. Systems of weights and measures - customary or metric.** The inch pound system and the metric system of weights and measures are jointly valid, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weights and measures, the tables of weights and measures, and the equivalents of weights and measures, as published by the National Institute of Standards and Technology, are recognized and shall govern weighing and measuring equipment and transactions in this state.

**35-14-104. Physical standards.** Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the state's primary standards of weights and measures and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the commissioner. The commissioner shall have the custody of the state standards of weights and measures and of the other standards and equipment provided for by this article, and he shall keep accurate records of the same.

**35-14-105. Technical requirements for weighing and measuring devices.** The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the national conference on weights and measures and published in the National Institute of Standards and

Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in this state, except as modified or rejected by this article or any rule or regulation promulgated pursuant to this article.

The commissioner shall require any weight or measure or any weighing or measuring instrument or device to be issued a Certificate of Conformance from the National Type Evaluation Program prior to use for commercial or law enforcement purposes.

**35-14-106. Administration.** The commissioner shall administer and enforce the provisions of this article and shall have and may exercise any and all of the administrative powers conferred upon the head of a department of the state. The commissioner is authorized to employ, pursuant to section 13 of article XII of the state constitution, such deputies and inspectors as he may deem necessary for the proper enforcement of this article, subject to the constitution and laws of the state. The powers and duties given to and imposed upon the commissioner are also given to and imposed upon the deputies and inspectors when acting under the instructions and at the direction of the commissioner.

**35-14-107. Powers and duties of the commissioner.**

(1) The commissioner shall:

(a) Maintain traceability of this state's standards to the National Institute of Standards and Technology;

(b) Implement and carry out the provisions of this article;

(c) Establish requirements for labeling, requirements for the presentation of cost-per-unit information, standards of weight, measure, or count, and reasonable standards of fill for any packaged commodity;

(d) Grant any exemptions from the provisions of this article or any rules or regulations promulgated pursuant thereto if appropriate to the maintenance of good commercial practices;

(e) Conduct investigations to ensure compliance with this article;

(f) Delegate to appropriate personnel any responsibilities for the proper administration of this article;

(g) Test annually the standards of weights and measures used by any city or county within the state and approve the same when found to be correct;

(h) Inspect and test weights and measures kept, offered, or exposed for sale, including prepackaged commodities;

(i) Inspect and test, to ascertain if they are correct, weights and measures commercially used:

(I) In determining the weight, measure, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or count; or

(II) In computing the basic charge or payment for services rendered on the basis of weight, measure, or count;

(j) Test all weights and measures used in checking the receipt or disbursement of supplies in every state institution if funds are appropriated for such maintenance;

(k) Approve for use, and may mark, such weights and measures as he finds to be correct and shall reject and mark as rejected such weights and measures as he finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in an unauthorized manner. The commissioner shall condemn and may seize weights and measures found to be incorrect and which are not capable of being made correct.

(l) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this article and the rules and regulations promulgated pursuant thereto. Accuracy of weight, measure, or count shall be determined by procedures set forth in the National Institute of Standards and Technology handbook 133 as adopted by the National Conference on Weights and Measures 1980, and any supplements or revisions thereto. When the nature of the packaged commodity requires assistance in testing, the commissioner may request the person in possession of the package to furnish equipment and assistance to complete the test.

(m) Prescribe the appropriate term or unit or weight or measure to be used whenever he determines, in the case of a specific commodity, that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparison or is represented in any manner that tends to mislead or deceive any person;

(n) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice, only after the commodity has entered intrastate commerce;

(o) Promulgate such rules and regulations as are necessary for the implementation and administration of this article in accordance with

article 4 of title 24, C.R.S. 1973, including, but not limited to, rules and regulations regarding methods of sale, unit pricing, declaration of quantity, retail sales price representations, including requirements for cents-off and introductory offer promotions, and labeling requirements related to the use and representation of measurement standards;

(p) Negotiate and enter into contracts with local governments for the implementation and enforcement of this article.

**35-14-108. Special police powers.** (1) When necessary to perform his duties or to implement the provisions of this article or the rules and regulations promulgated pursuant thereto, the commissioner or his authorized agent may:

(a) Enter any commercial premises during normal business hours; except that, in the event such premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(b) Issue stop-use, hold, or removal orders with respect to any weights and measures commercially used and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale which do not meet the requirements of this article;

(c) Seize, for use as evidence and without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this article or any rule or regulation promulgated pursuant thereto;

(d) Stop any commercial vehicle and, after presentment of his credentials, require that the person in charge of the vehicle produce any documents in his possession concerning the contents of said vehicle, inspect the contents of such vehicle at the site, and, if necessary, require such person to proceed with the vehicle to some specified place for inspection.

**35-14-109. Contract services.** Whenever a local government maintains a weights and measures division or employs an inspector and desires to enter into a contract with the department to render services prescribed by this article, the commissioner, at the time the contract is officially signed by both parties, shall certify the division personnel or inspector who is qualified to carry out the provisions of said contract. The average cost of such services rendered by a local government may not exceed the average cost of such services if rendered by the department.

**35-14-110. Misrepresentation of quantity.** No person shall sell, offer,



advertise, or expose for sale less than the quantity of commodity or service he represents nor take any more than the quantity of commodity or service he represents.

**35-14-111. Misrepresentation of price.** No person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

**35-14-112. Method of sale - general.** Except as otherwise provided by the commissioner, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the method of sale provides accurate quantity information.

**35-14-113. Method of sale - special food products.** (1) (a) Meat, poultry, and seafood shall be sold by weight; except that the following items may be sold by weight, measure, or count:

(I) Shellfish;

(II) Items cooked on the premises and sold as ready for immediate consumption;

(III) Items sold as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold;

(IV) Items sold as part of a sandwich;

(V) Live fish for stocking purposes, unprocessed fish, fowl, or animals acquired through the lawful pursuit of recreational activities.

(b) When meat, poultry, or seafood is combined with some other food element to form a distinctive food product, the quantity representation need not be made for each element.

(c) In the case of ready-to-cook stuffed poultry products, the label must show the total net weight of the stuffed poultry product and the net weight of the poultry in the product.

(2) (a) At the time of delivery of bulk meat sold by carcass, side, or primal cut, the seller shall provide the purchaser with a written statement containing the following information:

(I) The name and address of the seller;

(II) The date of the sale;

- (III) The name and address of the purchaser;
  - (IV) The identity of the meat in the most descriptive terms commercially practicable;
  - (V) The quality grade and yield grade of the meat, if so represented;
  - (VI) The price per pound of the meat before cutting and wrapping and the total price of the sale;
  - (VII) The total net weight (hanging weight) of the carcass, side, or primal cut prior to cutting or processing;
  - (VIII) The total net weight of the cut and processed meat delivered to the purchaser;
  - (IX) A list by name of all cuts of meat delivered;
  - (X) An itemized list of any and all charges over and above the original sale price of the carcass, side, or primal cut;
  - (XI) A separate indication of the quantity of any meat or other commodity received by a consumer purchaser as an inducement in connection with the purchase of the carcass, side, or primal cut.
- (b) The written statement shall not include the weight of any meat or other commodities received by the purchaser as a bonus offer or gift in connection with the purchase of the carcass, side, or primal cut. The statement shall include a description of whether the sale is from the forequarter or hindquarter.

**35-14-114. Method of sale - special nonfood products.**

(1) All coal, coke, and charcoal shall be sold by weight. All bulk sales shall be accompanied by a weight certificate, ticket, or invoice, as set forth in section 35-14-122 (6).

(2) (a) In addition to other methods of measurement, motor fuels may be sold by gallon equivalents pursuant to the requirements of section 8-20-232.5 C.R.S., notwithstanding the provisions of any National Institute of Standards and Technology handbook or other national standard that is adopted by this state.

**35-14-115. Machine vended commodities.** (1) Each vending machine which dispenses commodities in package form shall indicate:

- (a) Proper identity;
- (b) Net quantity; and
- (c) Name, address, and telephone number of the vendor or of the

responsible party.

(2) The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

**35-14-116. Railroad car tare weights.** (1) Whenever stenciled tare weights on freight cars are employed in the sale of commodities or the assessment of freight charges, the following conditions and requirements shall apply:

(a) All newly stenciled or restenciled tare weights shall be accurately represented to the nearest one hundred pounds for inch pound units and to the nearest fifty kilograms for metric units, and the representation shall include the date of weighing.

(b) The allowable difference between actual tare weight and stenciled tare weight on freight cars in use shall be:

(I) If in inch pounds:

(A) Plus or minus three hundred pounds for cars of fifty thousand pounds or less;

(B) Plus or minus four hundred pounds for cars over fifty thousand pounds but not over sixty thousand pounds; or

(C) Plus or minus five hundred pounds for cars over sixty thousand pounds.

(II) If in metric:

(A) Plus or minus one hundred fifty kilograms for cars twenty-five thousand kilograms or less;

(B) Plus or minus two hundred kilograms for cars over twenty-five thousand kilograms but not over thirty thousand kilograms; or

(C) Plus or minus two hundred fifty kilograms for cars over thirty thousand kilograms.

(c) Tare weight determinations for verification or change of stenciled weights shall only be made on properly prepared and adequately cleaned freight cars.

(d) Tank cars, covered hopper cars, flat cars equipped with multideck racks or special superstructures, mechanical refrigerator cars, and house-type cars equipped with special lading protective devices must be reweighed and restenciled only by owners or their authorized representatives if the car bears no lightweight (empty weight)

stenciling or if repairs or alterations result in a change of weight in excess of the permissible lightweight tolerance.

**35-14-117. Unit pricing - application - inch pound or metric.**

(1) Except for random-weight packages unit priced in accordance with rules and regulations and uniform weight packages of cheese and cheese products unit priced in the same manner and by the same type of equipment as random-weight packages, any retail establishment providing unit price information in addition to the total price for any commodity shall also provide the unit price information for all such commodities as required by rules and regulations.

(2) Either metric or inch pound unit prices may be used for commodities marked in either system; except that, when unit price is changed to metric for any given type of commodity, unit pricing for all sources or suppliers of that commodity should change to metric.

**35-14-118. Declarations on packages.** (1) Except as otherwise provided in this article, any commodity in package form shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(a) The net quantity of the contents in terms of weight, measure, or count; and

(b) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor.

(2) Under paragraph (a) of subsection (1) of this section, the commissioner, by regulation, shall establish reasonable variations or tolerances to be allowed and also exemptions as to small packages.

**35-14-119. Misleading packages - allowances.** No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the commissioner.

**35-14-120. Declaration of unit price on random-weight packages.** In addition to the declarations required by section 35-14-118, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

**35-14-121. Weigher - qualification - certification - revocation.**

(1) A person who has sufficiently good moral character to carry on the business stated in the application, subject to section 24-5-101 C.R.S., who has the ability to weigh accurately make correct weight

certificates, and who has received from the commissioner a certificate of certified weigher may use the title of and shall be authorized to act as a certified weigher.

(2) An application for a certificate of certified weigher shall be made upon a form provided by the commissioner. The application shall include evidence that the applicant has the qualifications required by subsection (1) of this section.

(3) The commissioner may adopt rules for determining the qualifications of the applicant for a license as a certified weigher. For the purpose of determining qualifications of the applicant, the commissioner may approve the qualifications of the applicant upon the basis of the information supplied in the application or he may examine such applicant orally or in writing or both. He shall grant certificates of certified weigher to such applicants as may be found to possess the qualifications required by subsection (1) of this section. The commissioner shall keep a record of all such applicants and of all certificates issued.

(4) The commissioner may, upon request and without charge, issue a limited certification as a certified weigher to any qualified officer or employee of a municipality or county of this state or of a state commission, board, institution, or agency authorizing such officer or employee to act as a certified weigher only within the scope of his official employment.

(5) All certificates of certified weighers in existence as of June 30, 1983, shall expire December 31, 1988. All certifications issued on and after July 1, 1983, shall expire five years after issuance. Renewal applications shall be in such form as the commissioner shall prescribe.

(6) The following persons shall be permitted, but shall not be required, to obtain certification as certified weigher:

(a) A weights and measures officer when acting within the scope of his official duties;

(b) A person weighing property, produce, commodities, or articles that he or his employer, if any, is buying or selling; and

(c) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal law or the laws of this state relative to warehousemen or processors.

(7) The commissioner, in accordance with section 24-4-104, C.R.S., may suspend, deny, revoke, restrict, place on probation, or refuse to renew the certificate of any certified weigher or applicant for such certificate if such certified weigher or applicant has been convicted in any court of competent jurisdiction of violating any provision of this

article or if the commissioner is satisfied that the weigher has violated any provision of this article.

**35-14-122. Public scales - requirements - weight certificates - procedures - records.** (1) (a) Provision shall be made for official certified scales throughout the state for the purpose of doing public weighing if the scale owners agree to meet the requirements of this article. Such scales shall be operated only by a certified weigher. All equipment used by certified weighers shall be approved by the commissioner.

(b) The commissioner shall require the owner or operator of all certified scales to post on the outside of the scale house, where it can be conveniently observed by all persons, a sign at least twelve inches high and thirty-six inches long, stating the maximum weighing capacity of the scale. No person shall weigh or attempt to weigh any article or load having a greater weight or suspected weight greater than the rated capacity of the scale.

(2) (a) It shall be the duty of each certified weigher to weigh upon the certified scales any load delivered at the scales for weighing when engaged to do so by any person and to issue a certificate of correct weight. The certificate of correct weight shall state the gross weight of the load, the tare weight, the net weight of the load, and the date of weighing. In addition, the weight certificate shall indicate the state license number of the vehicle, or other positive identification, a serial number, the name of the shipper or the owner of the load, the nature of the load, the name of the receiver of the load, whether the driver is off or on the scale, the name of the certified weigher, and the location of the certified scale. For issuing a certificate, the certified weigher may charge a reasonable fee; except that no charge may be made for weighing done or for certificates issued upon the demand of the commissioner or any employee acting in an official capacity under the provisions of this article.

(b) All certified weighers shall keep a daily register in which they shall enter every transaction by them as certified weighers, including the gross weight of each load, the weight of the vehicle, the net weight of the load, the license number of the vehicle, if any, the name of the dealer or owner, the name of the weigher, the name of the person for whom the weighing was done, and the date of weighing. The daily register shall be kept by the certified weigher and shall be open at all times to inspection by the supervisor of measurements standards and all other inspectors of the department and by any other person interested therein. Such daily registers shall be kept for a period of two years.

(3) A weighing made of any vehicle or combination of vehicles to ascertain the gross, tare, or net weight for commercial purposes or certification by a certified weigher shall not be determined by any

procedure denominated as a split-weighing or fore-and-aft draft. The gross, tare, or net weight of any vehicle or combination of vehicles as a single unit shall be determined upon scales with platforms of sufficient size to accommodate the vehicle or combination of vehicles as one entire unit; except that the gross, tare, or net weight of a combination of vehicles may be determined upon a scale which will not accommodate the combination of vehicles as one entire unit if the same are separated and the weight of each member thereof can and is determined separately as an independent unit. In such cases, weight certificates shall be issued for each such separate weighing.

(4) The certified scales shall be available for use by the public each day of the year during all reasonable business hours. Sundays and other legal holidays are excepted.

(5) All persons, firms, and corporations which do public weighing for a fee shall keep a complete record of each such weighing for a period of two years, and at least one copy of each weighing certificate shall be retained on record at the place of weighing.

(6) (a) All commodities bought, sold, delivered, or in the process of changing ownership which use the weight of the content for final determination and settlement shall be weighed on a certified scale if neither the buyer nor the seller owns his own scale. The weigher shall issue a weight certificate containing all the information required by subsection (2) of this section to both the buyer and the seller. If the buyer or seller owns his own scale licensed by the department and uses such scale to determine the weight of such commodities, such party shall issue a ticket or invoice in duplicate to the other party. Said ticket or invoice shall contain all the information required by subsection (2) of this section.

(b) All commodities bought, sold, delivered, or in the process of changing ownership for which a weight certificate, ticket, or invoice has been issued pursuant to paragraph (a) of this subsection (6) and which are being hauled or transported on the streets, roads, or highways of this state shall be accompanied with a weight certificate or a ticket or invoice containing the information required by subsection (2) of this section.

**35-14-123. Weighing and measuring device sales and repair - certification of service persons** (1) Except as provided in subsection (11) of this section, before installing or performing any repairs or services on any weighing or measuring device which is required to be licensed in this state, a person shall make written application to the commissioner for certification upon forms provided by the department. For the purposes of this section, only one certificate is required for each business employing service persons.

(2) Certificates for scale service persons shall be issued in the

following classes:

- (a) Small capacity, up to one hundred pounds;
- (b) Medium capacity, up to two thousand pounds;
- (c) Large capacity, two thousand pounds and over.

(3) If ten percent or more of the devices installed or repaired in any one calendar year by a service person are rejected, such person shall be ordered to appear before the commissioner in accordance with the provisions of section 24-4-104, C.R.S., to show cause why the persons certificate should not be revoked.

(4) Test weights totaling a minimum of ten percent of the rated capacity of any large capacity scales must be used in the repairing or testing of such scales. Each section of scales having multisection-type construction shall be tested. For the repairing or servicing of scales using ratio weights, tests shall be made up to the capacity of the largest denomination of the ratio weight on hand.

(5) (a) No scale service person shall possess any test weights other than those weights meeting the requirements of the National Institute of Standards and Technology handbook 105-1: "Field Standard Weights", and any supplements or additions thereto. Weights employed in the testing, servicing, or repairing of a scale shall conform to the tolerances prescribed for such weights as set forth in said handbook 105-1, and any supplements or additions thereto, and scale service persons shall maintain their testing equipment within such tolerances at all times.

(b) All repairs and adjustments made by weighing or measuring device service persons shall conform to the technical requirements for weighing and measuring devices adopted in accordance with section 35-14-105.

(6) Each service person shall annually submit weights and standards to the laboratory for certification. Except that if such weights or standards are annually certified in another state by that state's metrology laboratory and evidence is shown of current certification, traceable to standards of the National Institute of Standards and Technology, which is less than a year from date of issuance, the service person shall be exempt from obtaining a Colorado certificate for the current year.

(7) Upon the completion of an installation or the repair of any device, the service person shall submit a placing-in-service report to the commissioner within ten days after such completion date. The report shall include a scale status report for scale capacities of five thousand pounds or more. Any weighing or measuring device tagged for repairs by the commissioner shall be repaired by the service person



within thirty days after receiving notification from the owner of the device.

(8) Any person shipping, delivering, or installing weighing and measuring devices shall cause a placing-in-service report to be filed with the commissioner within ten days after completing such action. The placing-in-service report shall indicate the date of shipment, delivery, or installation, the name and address of the user or operator, and the serial number, type, and capacity of such device.

(9) All licenses and certificates issued on or after July 1, 1983, shall expire five years after issuance. Renewal application shall be in such form as the commissioner shall prescribe. Persons licensed or certified as service persons shall also have authority to sell weighing and measuring devices.

(11) Nothing in this section shall be construed to prohibit any person from performing any repairs or service on any weighing or measuring device which is condemned or placed under work order by the commissioner, but such person may not remove any tag placed on any weighing or measuring device pursuant to the requirements of this article.

**35-14-124. Inaccurate devices - stickers - tags - wire seals.** (1) A blue tag indicating **"Work Order"** shall be placed on any weighing or measuring device which in the judgment of the commissioner is out of tolerance or in need of minor repairs. The owner or agent of the device shall call or notify a serviceman within two days of the date shown on the tag. Repairs must be made within thirty days, and, if not so made, the device shall be removed from commercial use. If the serviceman cannot complete repairs due to delay in obtaining parts or other justified circumstances, the commissioner may extend the time limit for repair for a reasonable time.

(2) A red tag indicating **"CONDEMNED"** shall be placed on any weighing or measuring device that is to be removed from use. The tag's wire seal shall be so placed as to make the device unusable in any form.

(3) (a) A device which requires a license and for which the license fee has not been paid shall be sealed with a wire seal and a yellow tag indicating that said device is sealed for nonpayment of the license fee. A device sealed with a yellow tag shall not be used for any commercial purpose. Devices which are being held for resale and are not being used need not be sealed and tagged for nonpayment.

(b) When a weighing or measuring device is found in a commercial establishment, it shall be prima facie evidence that said device is being used or employed. Such device must be properly licensed or have a wire seal and yellow tag attached.

(4) The official state seal, showing the condition of the device, is the only seal permitted on a device. No stickers indicating such statements as "Tested and Correct" or "Tested and Sealed" shall be placed on any weighing or measuring device by any operator thereof, serviceman, or other person.

**35-14-124.5. Disciplinary powers** (1) The commissioner may deny an application for, refuse to renew, revoke, or suspend a license or certificate or place a licensee or certificate holder on probation, if such person has:

(a) Violated any provision of this article or of any rule adopted by the commissioner under this article;

(b) Been convicted of a felony under any state or federal law; except that, in considering a conviction of a felony, the commissioner shall be governed by section 24-5-101, C.R.S.;

(c) Committed a fraud or deception in the procurement or attempted procurement of a license or certificate;

(d) Failed to comply with a lawful order of the commissioner concerning the administration of this article;

(e) Been convicted of deceptive trade practices under any state or federal law;

(f) Used a commercial measuring device or moisture - testing device in deceptive trade practices in violation of any state or federal law.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or certificate or the placing of a licensee or certificate holder on probation shall be conducted pursuant to article 4 of title 24, C.R.S.

(3) Any previous violation of this article by an applicant or associate of the applicant shall be sufficient grounds for denial of a license. For purposes of this subsection (3), "Associate" means:

(a) A person associated with the applicant in the business for which such applicant seeks to be licensed or certified;

(b) A partner, officer, director, or stockholder of more than thirty percent of the outstanding shares of a partnership or corporation, when such partnership or corporation is the applicant.

**35-14-125. Household scales.** (1) No overload type of spring scale or balance, commonly known as household scales, shall be used or employed in any commercial establishment for the weighing of any commodity sold or offered for sale to the public. Such scales may be sold or offered

for sale for household use only.

(2) No such household scale shall be sold or offered for sale by any manufacturer or vendor for use or service whatsoever unless the dial or reading face is plainly and conspicuously marked with the wording "Not legal for use in trade".

(3) Any household scale found in commercial use shall be subject to immediate confiscation and condemnation.

**35-14-126. Commercial weighing device exemption - licensing - testing.**

(1) The following classes of devices shall be exempt from licensing and testing:

(a) Person weighers also referred to as pennyweight scales;

(b) Any scale used as an in-plant scale to determine ingredients or other such services where the end product or service is determined by some means other than the in-plant scale;

(c) Those scales operated by the United States postal service;

(d) Postal scales used exclusively for determining postage fees and where final determination of weight is made by the United States postal service;

(e) A pharmacist's prescription scale having less than a four-ounce capacity.

**35-14-127. Licenses - fees - stickers - certificates.** (1) Before any person operates any scale, textile meter, or cordage meter for commercial purposes, except those exempted in section 35-14-126, he shall first procure from the department a license as provided for in this section. All such licenses shall expire on the June 30 next succeeding the date of issue.

(2) Any person desiring to obtain a license for the operation of a scale, textile meter, or cordage meter shall make application therefor to the department upon a form furnished by the commissioner which shall contain such information as the commissioner may, by rule or regulation, require. Every application for license shall be accompanied by the proper fee as established by this article.

(3) The commissioner shall test or cause to be tested for accuracy every scale, textile meter, or cordage meter for which a license has been issued at least once every twelve months or more often if necessary. It is the duty of the inspector making the tests to make minor adjustments to all scales, textile meters, and cordage meters that may be necessary to make them measure correctly. If the design, construction, or location of any scale, textile meter, or cordage meter

is such as to require a testing procedure involving special equipment or accessories or an abnormal amount of labor, such equipment, accessories, and labor shall be supplied by the owner or operator of said scale, textile meter, or cordage meter as required by the commissioner. Nothing in this section shall prevent an inspector from testing a scale, textile meter, or cordage meter before the issuance of a license if the license fee is paid or is in the process of being paid.

(4) (a) The annual license fee for scales is based on capacity as follows:

- (I) Scales with a capacity of 80,001 pounds and over \$100.00
- (II) Scales with a capacity of 30,001 pounds through 80,000 pounds..... \$75.00
- (III) Scales with a capacity of 10,001 pounds through 30,000 pounds..... \$40.00
- (IV) Scales with a capacity of 2,001 pounds through 10,000 pounds \$20.00
- (V) Scales with a capacity of 451 pounds through 2,000 pounds \$12.00
- (VI) Scales with a capacity of 76 pounds through 450 pounds \$7.00
- (VII) Scales with a capacity of 75 pounds or less \$5.00

(b) The capacity of a given scale shall be determined by the manufacturer's rated capacity.

(c) The annual license fee for belt conveyor and in-motion railroad scales shall be one hundred twenty-five dollars per scale.

(5) The annual license fee for textile meters is five dollars per meter.

(6) The annual license fee for cordage meters is five dollars per meter.

(7) The annual license fee for moisture meters is twenty dollars per meter.

(8) The license fee for certified weighers is five dollars.

(9) The license fee for persons who sell or install devices is five dollars.

(10) The license fee for weighing and measuring device servicemen is five dollars.

(11) Upon payment of the required fee, the department shall issue a license certificate and identification sticker for each licensed device. Any license issued under this article shall apply only to the device licensed.

(12) The fee for a special test where passenger vehicles or light duty pickup trucks are used shall not exceed twenty-five dollars per hour plus the mileage charge set forth in section 24-9-104, C.R.S. 1973. The fee for a special test where scale test trucks are used shall not exceed twenty-five dollars per hour plus one dollar and twenty-five cents per mile traveled. The commissioner shall review and set the fees annually at a rate not to exceed actual costs. If any test of a device at one location requires time beyond the first day, the special test fee shall be effective for the balance of time after one day and until the test is completed. The special test fee may be charged for any test made at the request of the owner of the device.

(13) All license fees and testing fees collected by the department under this article shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**35-14-128. Laboratory approval - service and fees - condemnation.**

(1) Weights and measures will not be approved by the department's laboratory unless the design and construction of the unit complies with the design and construction requirements prescribed by the National Institute of Standards and Technology set forth in handbook 105-1: "Field Standard Weights"; handbook 105-2: "Field Measuring Flasks"; handbook 105-3: "Metal Volumetric Field Standards"; and circular 547: "Precision Laboratory Weights"; and any supplements or revisions to such handbooks or circular.

(2) The laboratory may require that specified standards submitted for calibration be cleaned or sanded, scraped, and painted before submission. Precision weights, volume, and length standards shall be cleaned and dried before submission. The fee for any metrology service shall not exceed twenty dollars per hour. The commissioner shall set the fee annually at a rate not to exceed actual costs. When metrology services are to be performed outside the laboratory, the laboratory shall be reimbursed for travel and time at the same rates for special tests set forth in section 35-14-127 (12).

(3) The laboratory may seize any weight, measure, or standard which it deems not to be susceptible of repair. Within twenty-four hours after such seizure, the laboratory shall cause notice of such seizure to be served personally or by first-class mail upon the owner of such weight, measure, or standard, advising such owner of the seizure and of the laboratory's intention to destroy such weights, measures, or standards,

pursuant to section 35-14-107 (1) (k). Such notice shall also state that the owner of such weights, measures, or standards may, within twenty days after the date of personal service or mailing, request in writing that the commissioner conduct a hearing to determine whether such weights, measures, or standards are not susceptible of repair. If a hearing is requested, it shall be conducted promptly, and the commissioner or his designated agent shall preside over such hearing, and the laboratory shall take no further action pending such hearing. If hearing is not requested, the seized weights, measures, or standards shall be destroyed after the expiration of the twenty-day period.

**35-14-129. Moisture-testing devices - specifications.** (1) Before any moisture-measuring device is operated for commercial use, a license must be obtained from the commissioner. An application for such license shall be made upon a form furnished by the commissioner. A moisture-testing device shall be considered in commercial use if the results of the device are a factor in determining:

- (a) The price of the commodity tested for moisture content; or
- (b) Drying or other processing charge based upon moisture content of the commodity.

**35-14-130. Citations - off sale.** (1) The commissioner shall issue citations or warning notices to anyone who has not complied with the requirements of this article and may establish a time period to correct any minor violation.

- (2) Products not meeting the requirements of this article or the rules and regulations promulgated by the commissioner shall be taken off sale and a citation issued.

**35-14-131. Civil penalties.** (1) Any person who, acting alone, through a servant or agent, or as the servant or agent of another person commits any of the acts enumerated in subsection (2) of this section shall be subject to a civil penalty of not more than seven hundred fifty dollars for each day of violation.

- (2) It is a violation for any person to:
  - (a) Sell, offer, or expose for sale or hire or have in his possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure;

(b) Use, or possess for current use or for hire, in the buying or selling of any commodity or thing, in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure which has not been sealed by the commissioner or his designated agent within the last year, unless specific written permission to use such weight or measure has been received from the commissioner;

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation;

(d) Remove, break, or deface, contrary to law or regulation, any tag, seal, or mark placed on any weight or measure pursuant to the requirements of this article, except in the case of the commissioner or a service person, certified pursuant to section 35-14-123, performing duties provided for in this article or any rule adopted pursuant thereto;

(e) Sell, or offer or expose for sale, less than the quantity such person represents of any commodity, thing, or service;

(f) Take more than the quantity such person represents of any commodity, thing, or service when, as a buyer, such person furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) Keep for the purpose of sale, advertise or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to the requirements of this article;

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and medical prescriptions, a weight or measure which is so positioned that its indications may not be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer; except that this paragraph (h) shall not apply to livestock scales used in any licensed yard selling livestock;

(i) Violate any provision of this article or any rule or regulation promulgated under this article for which a specific penalty has not been prescribed;

(j) Act as or represent oneself to be a certified weigher without being certified therefor, or for any certified weigher to: Falsely certify the weight of any load, or part of any load, or of any article whatsoever; falsely certify any net or gross weight required by this article to be in said certificate; refuse to weigh any article or thing which it is such person's duty to weigh; or refuse to state in any weight certificate anything required to be therein;

(k) Alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighed, alter or diminish the quantity thereof;

(l) Hinder or obstruct in any way the commissioner or the commissioner's authorized agent in the performance of the commissioner's official duties under this article;

(m) Act as or represent oneself to be a certified weighing or measuring device service person without being so certified.

(3) Any civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit the same to the general fund. Penalties shall be determined by the commissioner or the commissioner's designee and may be collected by the department by action instituted in a court of competent jurisdiction for collection of such penalty. In determining the amount of any civil penalty to be assessed, the commissioner shall consider any relevant factors. The final decision of the commissioner or the commissioner's designee shall be subject to judicial review. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

**35-14-132. Criminal penalties.** (1) Any person who willfully makes, installs, sells or offers to sell, or uses or allows to be used on his weights or measures any counterfeit seal, or seal of the commissioner without proper authority, commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. 1973.

(2) The commissioner shall inform the district attorney of the proper district of any criminal violation of this article. It is the duty of each district attorney to whom the commissioner presents satisfactory evidence of any violation of this article to cause appropriate proceedings to be commenced and prosecuted in a court of competent jurisdiction. If the district attorney fails to so act within a reasonable time, the commissioner may notify and be represented by the attorney general.

(3) All criminal fines imposed and collected for violations of the provisions of this article shall be paid into the county treasury for the use of the people of the county in which the offense was committed.

**35-14-133. Restraining orders and injunctions.** (1) If any person fails to comply with any provision of this article or any rule or regulation promulgated under this article, the commissioner may request the district attorney for the judicial district in which the alleged



violation exists or the attorney general to bring, and if so requested it shall be the duty of such district attorney or the attorney general to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation.

(2) Actions brought under this section shall be brought in the district or county court where the violation occurs. The institution of such injunction proceeding shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such injunctive proceeding and shall not preclude assessment of civil penalties or any other authorized enforcement action.

**35-14-134. Repeal of sections - review of functions.** Sections 35-14-102 (3), 35-14-121 to 35-14-124.5, 35-14-127, 35-14-129, 35-14-131 (1) (d), (1) (j), and (1) (m) are repealed, effective July 1, 2010. Prior to such repeal, the licensing and certification functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

**Section 2.** 42-3-123 (2), Colorado Revised Statutes 1973, is amended to read:

**42-3-123 Registration fees - passenger-mile and ton-mile taxes.** (2) With respect to passenger-carrying motor vehicles, the weight used in computing annual registration fees shall be that weight published by the manufacturer in approved manuals, and, in case of a dispute over the weight of any such vehicle, the actual weight determined by weighing such vehicle on a certified scale, as provided in section 35-14-222 (6), C.R.S. 1973, shall be conclusive. With respect to all other vehicles, the weight used in computing annual registration fees shall be the empty weight thereof, determined by weighing such vehicle on a certified scale.

**Section 15, effective date - applicability.** This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

**MEASUREMENT STANDARDS ACT**  
**COLORADO DEPARTMENT OF AGRICULTURE**

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